Appendix A

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United States of America and
Interstate Commerce Commission.

In the United States District Court for the Northern District of California, Southern Division

Civil Action No. 34,985

County of Marin, et al.,
Plaintiffs,
vs.
United States of America and Interstate Commerce Commission,
Defendants.
Golden Gate Transit Lines, Pacific Greyhound Lines, and The Greyhound Corporation,
Defendants in Intervention.

JUDGMENT

The motion of the defendants United States of America and Interstate Commerce Commission for

judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure and the motion of the defendants in intervention Golden Gate Transit Lines, Pacific Greyhound Lines, and The Greyhound Corporation to dismiss the complaint herein pursuant to Rule 12(b) of the Federal Rules of Civil Procedure having come on for hearing before the special statutory three-judge District Court on February 23, 1956, and the motion of the plaintiffs for leave to amend their complaint pursuant to Rule 15 of the Federal Rules of Civil Procedure having come on for hearing before the same Court on April 20, 1956, and briefs having been filed, argument of counsel having been heard, and the Court having given due consideration to the issues thereby presented, and having filed its opinion on April 12, 1957, setting forth its conclusions, and it appearing to the Court that the said motions for judgment on the pleadings and to dismiss the complaint should be granted and that the said petition for leave to amend the complaint should be denied;

It is hereby ordered, adjudged, and decreed that the complaint herein be and it is hereby dismissed with prejudice; that the petition for leave to amend the complaint be denied; and that said defendants and defendants in intervention do have and recover their costs herein from the plaintiffs.

Dated: May 3, 1957.

/s/ William Healy,
Judge,
/s/ Oliver J. Carter,
Judge.

I concur in the foregoing, save and except as to th
refusal of the Court to permit plaintiffs to amen
their complaint (see Concurring and Dissenting Opi
ion heretofore filed):

/s/ George B. Harris,
Judge.

Approvals as to form attached.

Appendix B

Original Filed Apr. 12, 1957.
Clerk, U. S. Dist. Court,
San Francisco.

In the United States District Court for the Northern District of California, Southern Division

Civil Action No. 34,985

County of Marin, et al.,
Plaintiffs.

vs.

United States of America and Interstate Commerce Commission,
Defendants.

Golden Gate Transit Lines, Pacific Greyhound Lines, and The Greyhound Corporation,
Defendants in Intervention.

OPINION

Before Healy, Circuit Judge, and Harris and Carter, District Judges.

Carter, District Judge.

This action has been brought to restrain the enforcement of, and to set aside an order of the Inter-

state Commerce Commission which approved and authorized a plan of the Pacific Greyhound Lines to transfer its San Francisco commuter operation to its new subsidiary, the Golden Gate Transit Lines hereinafter referred to as "Pacific" and "Golden Gate", respectively. Jurisdiction of this Court is sought under 28 U.S.C. 2325 and 28 U.S.C. 2284. The complaint attacks the authority of the Commission to make the order of approval, and has been brought by the counties of Marin, Contra Costa, each of which lies across the bay from San Francisco, and two commuter associations. Named as defendants are the United States and the Interstate Commerce Commission, and these parties, after answering, moved for a judgment on the pleadings. Golden Gate, Pacific, and the parent of Pacific, the Greyhound Corporation, all joining as defendants in intervention, have moved to dismiss the complaint for failure to state a claim.

Each of these motions raise the same question, whether the Commission was correct in ruling that section 5(2)(a) of the Interstate Commerce Act, 49 U.S.C.A. §5(2)(a), gave jurisdiction to approve the proposed transaction. That section requires approval of the Commission:

> ". . . for two or more carriers to consolidate or merge their properties or franchises, or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership; or for any carrier, or two or more carriers jointly, to purchase, lease, or contract to operate the properties, or any part thereof, of another; *or for any*

carrier, or two or more carriers jointly, to acquire control of another through ownership of its stock or otherwise; or for a person which is not a carrier to acquire control of two or more carriers through ownership of their stock or otherwise; or for a person which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its stock or otherwise;". (Emphasis added.)

It is the meaning of the italicized portion of the section which is in dispute here. The proposal is to transfer the properties and operating rights used to serve the San Francisco Bay Area commuter service, to Golden Gate, and Pacific would concurrently *acquire control* of Golden Gate by taking back all of its capital stock. By the same transaction, Greyhound Corporation, through its ownership of Pacific, would also *acquire control* of Golden Gate. The plaintiffs claim that this does not come within the italicized portion of Section 5(2)(a) because the section was only intended to cover cases where a carrier or carriers seek to acquire control of another *existing* carrier, and that Golden Gate will not acquire a carrier status until the operating rights of Pacific have actually been transferred to it.

We have no difficulty in finding that the proposed transaction is covered by the language of the section; it merely says that approval of the Commission is required when one carrier acquires control of another. That is precisely what the Greyhound Corporation and Pacific ae seeking to do here; although Golden

Gate will not attain the status of a carrier until the operating rights of Pacific are transferred to it, neither will the parent corporations acquire control until then, for the properties and operating rights are to be simultaneously exchanged for the stock.

The real thrust in the plaintiffs' argument that the section does not cover the proposed transaction lies in their contention of legislative purpose in enacting this legislation. It is argued that in enacting Section 5 Congress only intended to cover consolidations, unifications, and mergers of carrier control; that there was no intention to cover the case of an existing carrier splitting up its operations, which Pacific seeks to do here. This version of the Congressional intention is buttressed by excerpts showing that Congress, in enacting Section 5, as part of the Transportation Act of 1940, 54 Stat. 905, was endeavoring to inject economic strength into failing carriers, by permitting them to combine and consolidate, providing their plans met with certain other tests.

We assume that the dominant purpose of Section 5(2) was to reach cases in which carriers sought to unite their control. But we think the plaintiffs' version of Congressional purpose underlying Section 5 is too narrow, and that it ignores the whole regulatory scheme of the Interstate Commerce Act. Section 5(2)(a) was not newly conceived in the Transportation Act of 1940. We find that Section 5 of the Transportation Act of 1920, 41 Stat. 456, contained provisions substantially like those found in the present statute. While the 1920 Act applied only to railroad car-

riers, Congress had already determined the necessity of subjecting transactions affecting carrier control to the scrutiny of the Interstate Commerce Commission. In 1948, the Supreme Court reiterated the purpose of the 1920 Act in *Schwabacher v. United States*, 334 U.S. at 182, where it said:

> "In a series of decisions on particular problems, this Court defined the general purposes of that Act to be the establishment of a new federal railway policy to insure adequate transportation service by means of securing a fair return on capital devoted to the service, restoration of impaired railroad credit, and regulation of rates, security issues, consolidations and mergers in the interest of the public. The tenor of all of these was to confirm the power and duty of the Interstate Commerce Commission, regardless of state law, *to control rate and capital structures, physical make-up and relations between carriers*, in the light of the public interest in an efficient national transportation system. (Citing cases)." (Emphasis added).

So far as it was the purpose of Congress to have the Interstate Commerce Commission control the capital structure, physical make-up and relations between carriers under the power conferred by Section 5, we are unable to read out of the statute the transaction at hand.

We also find support for upholding the jurisdiction of the Commission here in *New York Central Securities Co. v. U.S.*, 287 U.S. 12, (1932). The question was whether Section 5(2) then applying only to

railroad carriers (41 Stat. 456) and requiring Commission approval when one carrier acquired control of another "either under a lease or by the purchase of stock" reached a transaction where a parent corporation leased the properties of its subsidiary. The Supreme Court held that the leasing constituted an acquisition of control within the language of the Act, over the argument that the parent already controlled the carrier's properties through its ownership of the stock of the subsidiary. There was no new control acquired that did not exist before in a different degree, but merely a change in the form of the control. The proposal in the instant case is to change the degree or form of control over the properties of the carrier, by transferring them to the subsidiary Golden Gate, and we think that the above holding requires that it be approved by the Commission under the present Section 5(2).

We find no cases construing the pertinent language of Section 5(2)(a) since it was expanded to include motor carriers, but there are judicial decisions construing comparable provisions in the Civil Aeronautics Act. Section 408 of that Act (49 U.S.C.A. 488) provides that:

> "(a) It shall be unlawful, unless approved by order of the Board as provided in this section . . . (5) for any air carrier or person controlling an air carrier, any other common carrier, or any person engaged in any other phase of aeronautics, to acquire control of any air carrier in any manner whatsoever;"

In *Pan American Airways Co. v. Civil Aeronautics Board,* 121 F.2d 810 (CCA 2, 1941), American Export Airlines Inc., organized as a subsidiary to American Export Lines, Inc., a common carrier by water, applied to the Civil Aeronautics Board for a certificate permitting it to do business as an air carrier, and in addition, approval of control of it by its parent American Export Lines, under the above section. The Board dismissed the application for approval of control, on the same theory which plaintiffs invoke here, viz., the control provision did not reach a transaction unless the air carrier sought to be controlled was already an air carrier. Judge Hand rejected this interpretation, reversed the dismissal, and remanded the case to the Board, stating:

> "This seems to us an unduly literal interpretation of subdivision (5). In our opinion 'to acquire control of any air carrier in any manner whatsoever' is to take all steps involved in obtaining control, which in this case would consist in supplying a subsidiary corporation, organized for air carriage and possessing adequate financial resources, with a certificate authorizing operation. Any other interpretation would enable a steamship company, by organizing a subsidiary for air carriage, to escape the requirement of Section 408(b) that the 'Authority shall not enter . . . an order of approval unless it finds that the transaction proposed will promote the public interest by enabling such carrier other than an air carrier to use aircraft to public advantage in its operation and will not restrain competition' ".

The reasoning of Judge Hand is equally applicable here. Section 5(2) subdivision (c) of the Interstate Commerce Act supplements Section 5(2)(a) in stating:

> "In passing upon any proposed transaction under the provisions of this paragraph (2), the Commission shall give weight to the following considerations, among others: (1) the effect of the proposed transaction upon adequate transportation service to the public; . . . (3) the total fixed charges resulting from the proposed transaction; and (4) the interest of the carrier employees affected."

If Greyhound is free to make substantial alterations in its corporate structure, to create subsidiaries to take over part of its existing operation, or perhaps to venture into new areas, without the necessity of seeking Commission approval, the function of that body to assure adequate transportation service to the public is unduly restricted.

Finally we note that the Interstate Commerce Commission itself has, on other occasions, ruled that the type of transaction which Pacific Greyhound proposes is a Section 5 transaction. See: *Columbia Motor Service Co.—Purchase—Columbia Terminals Co.*, 35 M.C.C. 531, and *Consolidated Freightways, Inc.,—Control—Consolidated Convoy Co.*, 36 M.C.C. 351, which were decided shortly after Section 5(2) was enacted into its present form. In each of these cases motor carriers sought and obtained Commission ap-

proval to transfer a part of their operation to a newly created corporation, whose carrier status had to await the completion of the transaction. See also: *Takin—Purchase—Takin Bros. Freight Line, Inc.*, 37 M.C.C. 626, and *Gelhous & Holobinko—Control*, 60 M.C.C. 167. The Supreme Court has made itself clear regarding the weight to be given to Commission interpretations of the Interstate Commerce Act. In *United States v. American Trucking Associations*, 310 U.S. 534 (1940) at 549 it said:

> "In any case such interpretations are entitled to great weight. This is peculiarly true where the interpretations involve 'contemporaneous construction of a statute by the man charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new.'"

We therefore hold that the Commission was correct in holding that it had jurisdiction to approve the transaction in question, and both motions should be granted.

There remains one further issue to be decided. During the final arguments on the motions to dismiss and for judgment on the pleadings, plaintiffs, County of Marin, County of Contra Costa, Marin County Federation of Commuters Clubs, and Contra Costa Commuters Association, asked for permission to amend the complaint. After the motions had been submitted these plaintiffs formally moved the Court for permission to amend the complaint by adding allegations challenging the findings of the Commission that the transaction be-

tween Pacific and Golden Gate was consistent with the public interest, and that the Commission abused its discretion in denying plaintiff's petition for rehearing and reconsideration. The effect of the motion to amend is to inject into the case the completely new issue of the sufficiency of the evidence to support the findings of the Commission. The complaint, as originally framed, raised only the issue of jurisdiction, and the motions to dismiss and for judgment on the pleadings were argued and submitted only on that issue. Plaintiffs concede that the proposed amendment attempts to raise issues known to them at the time of the filing of the complaint and at the time of the hearings on the motions. They argue, however, that under the liberal provisions of Rule 15(a) of the Federal Rules of Civil Procedure the amendments should be permitted.

The motion for leave to amend is addressed to the sound discretion of the Court, and must be decided upon the facts and circumstances of each particular case. It would serve no useful purpose to review the many cases dealing with Rule 15. It is sufficient to say that the power of the Court to permit amendment should not be used to completely change the theory of the case after the case has been submitted to the Court on another theory without some showing of lack of knowledge, mistake or inadvertence on the part of the party seeking amendment, or some change of conditions of which that party had no knowledge or control. Plaintiffs have made no such showing here. The motion to amend is denied.

Counsel for defendants and defendants in intervention are directed to prepare and present orders in conformity herewith.

Dated: April 12th, 1957.

William Healy,
Circuit Judge.
Oliver J. Carter,
District Judge.

I concur in the majority opinion upholding the jurisdiction of the Commission. I dissent in the refusal of the Court to grant plaintiffs permission to amend the complaint regarding the issue of the sufficiency of the evidence.

A memorandum of my views to follow hereafter.

Dated: April 12, 1957.

/s/ George B. Harris,
District Judge.

Appendix C

Original Filed Apr. 17, 1957.
Clerk, U. S. Dist. Court,
San Francisco.

In the United States District Court for the Northern District of California, Southern Division

Civil Action No. 34,985

County of Marin, County of Contra Costa, Marin County Federation of Commuter Clubs, Contra Costa County Commuters Association, and Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Divisions 1055, 1222, 1223, 1225 and 1471,
Plaintiffs,

vs.

United States of America and Interstate Commerce Commission,
Defendants,

Golden Gate Transit Lines, Pacific Greyhound Lines, and The Greyhound Corporation,
Defendants in Intervention.

CONCURRING AND DISSENTING OPINION OF JUDGE HARRIS

* * * * *

Dated: April 17, 1957.

George B. Harris,
United States District Judge

Judge Harris, concurring in part and dissenting in part:

(Defendants in intervention Golden Gate Transit Lines and Pacific Greyhound Lines shall be hereinafter referred to as "Golden Gate" and "Pacific" respectively, as in the majority opinion.)

I concur in the majority opinion upholding the jurisdiction of the Commission. I dissent in the refusal of the Court to grant plaintiffs permission to amend the complaint regarding the issue of the sufficiency of the evidence.

The motion to amend the complaint and the proposed amendment itself must be considered in the light of the historical events and proceedings conducted by the defendant in intervention, Pacific, before the California Public Utilities Commission (formerly the Railroad Commission of California).

The granting or refusing to grant leave to amend cannot be viewed in a judicial vacuum, nor can the determination and the exercise of a sound discretion be reached without a regard for the realities, and the background and motives which inspired Pacific to invoke the procedural technique thereafter adverted to

Particularly is this so by reason of the admission made by Pacific that it invoked the procedure under Section 5(2)(a) of Title 49 U.S.C.A., before the Interstate Commerce Commission, creating Golden Gate, in order to circumvent the rate-making authority and jurisdiction of the California Public Utilities Commission. In short, the foregoing section was availed

of as a legal device to avoid not only the proceedings and decisions which will be reviewed immediately hereafter, but as well, the express agreement made by Pacific, which in turn inured or should inure to the benefit of residents and commuters of the bay area communities involved in this litigation.

Judicial notice may be had of the fact that Pacific has appeared before the California Public Utilities Commission on numerous occasions in connection with its operations in Marin and Sonoma Counties.[1] In 1939 it made its application to replace Northwestern Pacific Railroad which was then serving commuters by means of rail and ferryboat service. When many North Bay residents protested at the proposed change, Pacific assured the California Railroad Commission that it would assume the exclusive transportation service on a minimum financial recovery basis. (42 Opinions and Orders of the Railroad Commission of California 661.) At page 668 the following language appears in the opinion of the Commission:

> "The record, as it now stands, shows conclusively that the Greyhound is the only carrier which is able financially and otherwise to provide Marin County with a service to take the place of that to be abandoned. It has made a firm offer to substitute its proposed service for that of the Northwestern Pacific in event it is granted authority to serve the entire territory to be abandoned by the rail carrier.
>
> The record shows that the Pacific Greyhound Lines made its proposal not with the thought that

[1] 42 Ry. Comm. 372 and 661; 50 PUC 650; 53 PUC 634, etc.

it would return the full cost of operation, but that it would realize something over and above the out-of-pocket cost of operation. The inference may be fairly drawn that the decision to embark upon this undertaking was made with some hesitation and only after a long and complete study of its feasibility. It may be that the Pacific Greyhound Lines was influenced to some extent by the fact that if its application were granted and the Northwestern Pacific Railroad authorized to abandon service, the Northwestern Pacific Railroad, a wholly owned subsidiary of the Southern Pacific Company, (4) would be relieved of a substantial continuing out-of-pocket loss. [(4) The Southern Pacific Company owns approximately 39% of the common stock of the Pacific Greyhound Lines.]

Whatever may have been the underlying reasons which influenced the Greyhound to make this offer is relatively unimportant, as the record leaves no doubt that it was made in good faith and with the avowed purpose of providing Marin County with a satisfactory, adequate, and enduring transportation service. These underlying reasons only become important in evaluating the statement of the Greyhound, heretofore quoted, to the effect that a denial of the right to serve Mill Valley would necessitate a withdrawal of its offer and a resurvey of the entire proposal."

The order of the Commission based upon its pleadings and opinion concluded as a condition for the granting of a certificate of public convenience and necessity that:

"(4) The rights and privileges herein authorized may not be discontinued, sold, leased, transferred,

nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer, or assignment has first been obtained."

At a recent hearing,[2] Pacific admitted that it had agreed to operate without hope of financial reward except the realization of sufficient returns to cover the actual out-of-pocket costs of the North Bay venture.

The foregoing review is significant by reason of the recent Supreme Court decision in Pacific Gas and Electric Co. v. Sierra Pacific Power Co., 350 U.S. 348, decided shortly after the instant ruling of the Interstate Commerce Commission.

In setting aside an order of the Commission and remanding the Pacific Gas and Electric Company case, the Supreme Court held that a public utility may not be relieved of an improvident bargain even though such bargain produces less than a fair rate of return on its investment. The Commission's duty is to protect the *public interest* as distinguished from the "*private interests of the utilities.*" A contract is neither unjust nor unreasonable merely because it is unprofitable to the utility. The express agreement of Pacific with the California Railroad Commission dated May 21, 1940, provident or improvident, cannot be ignored.

By parity of reasoning, when the ICC reviews local operations of Pacific it must consider its financial returns in terms of the public interest. Even though income realized from a specific sector is less than a

[2]Vol. 53 California Public Utility Commission Reports 634.

fair rate of return, Pacific is not entitled to relief in the absence of proof of losses (not offset by intrastate revenue), which place a burden on interstate commerce.

Plaintiffs in their proposed amendment to the complaint have sought to point out the frailties in Golden Gate, as well as the avoidance on the part of Pacific of the agreement made in the vital proceedings before the California Public Utilities Commission—vital in the sense that the proceedings sought to and did protect the public interest as distinguished from the "private interest of the utilities." (Cf. Pacific Gas and Electric Co. v. Sierra Pacific Power Co., supra.)

The proposed amendment sets forth and challenges the findings of the ICC as to the financial ability of Golden Gate to operate. They charge that their limited capital structure—contributed by Pacific—and the narrow scope of their operations preclude economic success. The amendment also challenges numerous findings pertaining to Golden Gate as a carrier, contending that there is no substantial evidence to show that the local operations will support this carrier. If, in fact, such operations now earn a fair return for Pacific, the latter had no basis for complaining about the intrastate drain on its interstate business and the supposed burden placed upon interstate passengers.

Plaintiffs' allegations establish the necessity for a complete hearing and review before this Court.[3] This is especially so in view of the fact that Pacific has

[3] Cf. Breswick & Co. v. United States, 138 F.Supp. 123, 137, 138.

undertaken to avoid the consequences of its agreement with the California Public Utilities Commission (see especially pp. 672, 673 of 42 Ry. Comm. of California), by disposing of its local operations to an independent, but wholly owned subsidiary without first obtaining written consent from the California Commission, which is opposed to the transfer.

Under all of the circumstances[4] and in the exercise of a sound and liberal discretion (Rule 15(a) FRCP), plaintiffs' motion to amend should be granted, since "justice so requires."[5]

As a matter of alternative relief, consistent with the Supreme Court decision in Pacific Gas and Electric Co. v. Sierra Pacific Power Co., supra, consideration should be given to a remand of said cause to the Interstate Commerce Commission for further proceedings.[6]

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[4]It should be observed that no defendant will suffer any substantial prejudice by permitting plaintiffs to amend their complaint. The California Public Utilities Commission granted Pacific a rate increase on its local operations shortly after this matter was argued and submitted to the court.

[5]Armstrong Cork Co. v. Patterson-Sargent Co., 10 FRD 534; McDowall v. Orr Felt & Blanket Co., 146 F.2d 136; Maryland Casualty Co. v. Rickenbaker, 146 F.2d 751; Lloyd v. United Liquors Corp., 203 F.2d 789; and L. A. Tucker Truck Lines, Inc. v. United States, 100 F.Supp. 432.

[6]Cf. United States v. Ohio Power Co. (Supreme Court) decided April 1, 1957, No. 312, Oct. Term, 1955.

Inland Freight Corp. v. United States, 60 F.Supp. 520 (9th Cir.); Clarke v. U. S., 101 F.Supp. 587; Carolina Freight Corp. v. United States, 38 F.Supp. 549.

Appendix D

Served
July 15 1955

Interstate Commerce Commission

No. MC-F-5643[1]

The Greyhound Corporation—Control: Pacific Greyhound Lines—Control: Golden Gate Transit Lines—Purchase (Portion)—Pacific Greyhound Lines.

Submitted March 16, 1955 *Decided July 6, 1955*

1. Application of Pacific Greyhound Lines for authority to acquire control of Golden Gate Transit Lines through ownership of capital stock and for the contemporaneous acquisition by Golden Gate Transit Lines of certain operating rights and property of Pacific; and of The Greyhound Corporation to acquire control of Golden Gate Transit Lines through stock ownership, and of the operating rights and property through the transaction, approved and authorized, subject to conditions.

2. Application by Pacific Greyhound Lines for a certificate of public convenience and necessity authorizing continuance of operations by it in interstate or foreign commerce between certain points in California, granted.

Allen P. Matthew and *Gerald H. Trautman* for applicants.

Spurgeon Avakian and *Jack Robertson* for protestants.

[1]This report embraces No. MC-1511 (Sub-No. 103), Pacific Greyhound Lines, San Francisco, Calif.

REPORT OF THE COMMISSION

By the Commission:

Exceptions were filed by applicants and by the protesting labor union to the examiners proposed report which recommended denial of the applications, and a reply to applicants' exceptions was filed collectively by the other protestants. Pursuant to applicants' request, oral argument was heard on March 16, 1955, in which applicants and all protestants participated. Our conclusions differ from those of the examiner.

By joint applications filed February 8, 1954, as amended, Pacific Greyhound Lines and Golden Gate Transit Lines, both of San Francisco, Calif., herein called Pacific and Golden Gate, respectively, seek authority under section 5 of the Interstate Commerce Act (1) for Pacific to acquire control of Golden Gate through ownership of all its outstanding capital stock, and (2) for the contemporaneous acquisition by Golden Gate of certain operating rights and property of Pacific. The Greyhound Corporation of Chicago, Ill., herein called Greyhound, which controls Pacific through ownership of a majority of its outstanding common capital stock[2] has joined in the application

[2]See the report in Finance Docket No. 18382, *The Greyhound Corporation Securities*, I.C.C. , decided April 22, 1954, for a discussion of certain financing plans in furtherance of Greyhound's long-range program to integrate into its organization 8 of its bus operating subsidiaries, including Pacific, and also 2 companies in which Greyhound owns no stock. In the pending application in No. MC-F-573, The Greyhound Corporation—Merger—Pacific Greyhound Lines; Control—California Parlor Car Tours Co., the merger of Pacific into Greyhound is proposed. That application reflects ownership by Greyhound as of November 12, 1954, of 97.8 percent of the outstanding common stock and 63.9 percent of the outstanding preferred stock of Pacific.

and seeks authority to acquire concurrent control of Golden Gate and of the operating rights and properties through the transaction. In a separate application, as a matter directly related to the applications under section 5, Pacific, in No. MC-1511 (Sub-No. 103), as amended, seeks a certificate of public convenience and necessity authorizing continuance of operations by it in interstate or foreign commerce between certain points in California, over portions of the routes over which Golden Gate would operate as a result of the purchase. The joint board having waived participation in No. MC-1511 (Sub-No. 103), a consolidated hearing was held before the examiner, at which Divisions 1055, 1222, 1223, 1224, and 1471, Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, herein called the Union, the counties of Marin and Contra Costa in California, herein collectively called the Counties, the Federation of Marin County Commuter Clubs, and the Contra Costa County Commuters Association, the last two herein collectively called the Commuter Associations, opposed the applications. Greyhound and Pacific operate substantially more than 20 motor vehicles.

Greyhound, a Delaware corporation, is the parent company of the nationwide system of motor bus transportation. It operates in interstate or foreign commerce as a motor common carrier of passengers over regular routes through the medium of autonomous operating divisions, which form integrated operating units within the company, and it controls a number of separate operating subsidiary corporations. It also controls several terminal, garage, and other noncarrier

companies, Greyhound's outstanding capital stock is widely distributed, the 10 principal stockholders owning and holding for the benefit of others, in the aggregate, 9.49 percent of the common voting stock as of March 2, 1953, the largest block of which constitutes 3.53 percent.

Pacific[3] operates as a motor common carrier of passengers between points in California, Oregon, Nevada, Utah, Texas, Arizona, and New Mexico.[4] It conducts intercity operations over routes between Astoria, Oreg., and San Diego, Calif.; between San Francisco and Salt Lake City, Utah; between Los Angeles and Albuquerque, N. Mex.; and between Los Angeles and El Paso, Tex. In combination with other members of the Greyhound system and with other bus lines, Pacific has been providing joint-through service between San Francisco, on the one hand, and, on the other, Seattle, Spokane, Chicago, St. Louis, and Boise; and between Los Angeles, on the one hand, and, on the other, Seattle, Chicago, San Diego, Memphis and New Orleans.

Pacific conducts extensive intrastate operations in California, and provides commutation or "mass transportation" service in and around the San Francisco Bay area under certificates issued by the California

[3]Pacific holds 100 percent of the stock of California Parlor Car Tours Company, which conducts a touring service between San Francisco and certain points in California, Reno, Nev., and Grants Pass, Oreg.

[4]Its interstate operations are conducted pursuant to certificates issued in No. MC-1511 and subnumbered proceedings. Pacific has pending, in No. MC-1511 (Sub-No. 102), an application for a certificate consolidating and superseding all of its presently outstanding separate certificates.

Commission, over routes embraced also in certificates issued by this Commission covering its interstate operations. These commuter operations cover distances up to 25 or 30 miles, radiating from San Francisco to the suburban area, north into Marin County, south on the Peninsula, and east into Contra Costa County. More specifically, the Marin County service includes Stinson Beach, Sausalito, Marin City, Mill Valley, Corte Madera, Larkspur, San Rafael, Ross, San Anselmo, Fairfax, Hamilton Field, Inverness, Bolinas, and Novato; the Contra Costa operation extends from San Francisco and Oakland and includes Berkeley, Martinez, Port Chicago, Orinda Corners, Lafayette, Walnut Creek, Concord, Camp Stoneman, Crystal Pool, Monument, Pittsburg, Antioch, Danville, and Dublin; and the Peninsula and Half Moon Bay operations include South San Francisco, San Francisco Airport, San Bruno, Millbrae, Burlingame, Belmont, San Carlos, San Mateo, Redwood City, Menlo Park, Bellehaven, Palo Alto, Sharp Park, Rockaway Beach, Montara, El Granada, and Half Moon Bay. The local operations represent 3.08 percent of Pacific's total route miles, account for 7.44 percent of its bus miles operated, and produce 9.16 percent of its gross passenger revenue; but they account for 35.49 percent of the total number of passengers transported by Pacific. Marin County has a population of about 100,000, the area served in Contra Costa County, 60,000,[5] and the Peninsula, 250,000.

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[5]The Rand McNally Road Atlas shows the population of Contra Costa County for 1950 as 298,984.

Golden Gate, which was incorporated on May 7, 1953, has engaged in no business activities and is not now a motor carrier. Pursuant to an agreement entered into on January 27, 1954, and a supplemental agreement of April 8, 1954, between Pacific and Golden Gate, the latter would acquire from the former, with the exception of authority over an alternate route between Danville and Dublin, over California Highway 21, which applicants request be canceled, the above-described interstate and intrastate operating rights of Pacific in the San Francisco Bay area, including intrastate authority within the cities of San Francisco, Oakland, Pittsburg, and Berkeley essential for operations in connection with the routes purchased. The interstate operating rights to be acquired are specifically set forth in Appendix A hereto, and our findings will be conditioned to cancel the operating rights over the alternate route mentioned. Golden Gate would also receive from Pacific $150,000 in cash, 52 buses recently purchased by Pacific under conditional sales contracts, 138 transit-type buses, and fare boxes used in the operations, and it would acquire Pacific's rights and assume its obligations in certain leaseholds and other contracts pertaining to the commuter operations. In payment therefor, Golden Gate would issue to Pacific all of its capital stock, consisting of 300,000 shares of $1 par value common, assume the outstanding indebtedness on the 52 buses, and it would be obligated to pay to Pacific the difference between such indebtedness and the net book value of the buses at the date of consummation. The amount of the differ-

ence would be carried by Golden Gate as an open account indebtedness to be repaid to Pacific as it is able to do so.

Principally in order to continue utilizing the routes in its long-haul interstate service, over which Golden Gate would render the commuter service as a result of this transaction, Pacific requests, in No. MC-1511 (Sub-No. 103), that a certificate be issued to it authorizing the transportation of passengers and their baggage, and express, mail, and newspapers, in the same vehicle with passengers, in the Marin County area between Novato and San Francisco; in the Contra Costa County area between San Francisco and Oakland, between Port Chicago and Antioch via Pittsburg, between Pittsburg and Antioch via Camp Stoneman, and between Martinez Junction and Camp Stoneman, via Concord Junction and Camp Stoneman Junction; and in the Peninsula area between San Francisco and Palo Alto, via San Mateo and also via Bellehaven, between San Francisco and Half Moon Bay, and between Half Moon Bay Junction and Crystal Springs Dam; with the latter two routes restricted to service during the summer months. Pacific would serve all intermediate points on these routes except those on the segment between Freeway Junction and Airport Overpass, which is southwest of San Francisco International Airport. With a few exceptions, the authority sought by Pacific in No. MC-1511 (Sub-No. 103), duplicates and constitutes part of the routes which Golden Gate would acquire in No. MC-F-5643. As long as it is able to secure access into and out of San

Francisco on its long-haul operations, Pacific would accept any restriction that might be imposed.

Golden Gate would operate under the same schedules now observed by Pacific. If necessary in the performance of the "local" service, Pacific would lease additional buses, up to 100, to Golden Gate at a rental based on the actual cost to Pacific of supplying the buses, including depreciation and a return on investment. Those terminals handling a preponderance of local traffic would be transferred to Golden Gate. Those terminals owned by Pacific, such as the ones at San Rafael and Palo Alto, would be leased to Golden Gate at a rental covering depreciation, taxes, and return on investment, and Pacific's leases on terminals such as those at Redwood City, San Mateo, and the San Francisco Ferry Building terminal, the latter exclusively used for commutation purposes, would be assumed by Golden Gate. Pacific would pay for its continued use of the first four terminals on a commission basis, Golden Gate would operate from Pacific's terminal at Oakland on a commission basis, and a portion of the cost of operating Pacific's San Francisco Seventh Street terminal would be allocated to Golden Gate on a trip basis. Charges, consisting of rentals, taxes, and insurance, to be assumed by Golden Gate with respect to terminal facilities aggregated approximately $26,500 a year as of April 14, 1954.

Pacific's servicing and maintenance facilities in San Francisco would be available to Golden Gate on a joint facility basis, with Golden Gate responsible for direct costs and its allocable share of overhead ex-

penses. Gasoline and oil would be furnished at cost. Golden Gate's offices would be located temporarily at the Seventh Street terminal in San Francisco, and it would be free to change any existing arrangements with respect to terminal, maintenance or other facilities. Golden Gate would have a separate management under a president or manager skilled in mass transportation. However, Pacific's representatives would at all times constitute a majority of Golden Gate's board of directors, although none would be directors of Pacific, and the board would include a representative from each of the areas served who would give particular consideration to the problems of his specific area.

Golden Gate would hire those employees of Pacific directly engaged in the local services who desire to transfer, and would assume all of Pacific's obligations to such employees under the terms of the collective bargaining agreement now in effect between Pacific and the Union. Pacific claims there would be no loss of employment. It is expected that approximately 310 drivers, 11 station employees, 13 supervisors and between 10 and 20 accounting and clerical employees would be transferred to Golden Gate. Pacific is willing to accept such protective conditions for employees as we may impose, but the Union has not indicated any withdrawal of its opposition by reason of this statement by Pacific.

Under the agreement between the parties, Pacific would not conduct any "local" services in the area except that it would transport passengers moving in

interstate commerce on its through buses over its retained routes. In other words, where permitted by the rights, applicants would have an arrangement for the optional honoring of interstate tickets in any area where a better service could be provided through such an arrangement. A joint fare arrangement between Golden Gate and Pacific is also contemplated to facilitate transfers of passengers at connecting points, although from past experience, it is not anticipated that such interline traffic would be substantial. Pacific would not transport any passengers in intrastate commerce over Golden Gate's routes, except to or from points beyond. It will be noted that this entails the transfer to Golden Gate of intrastate operating rights over the routes indicated, and the retention by Pacific of authority to transport intrastate traffic over certain of the same routes in its long-haul operations—somewhat similar to the proposal for the transportation of interstate traffic, which occasioned the filing of the application in No. MC-1511 (Sub-No. 103). There is some question in the record as to whether Pacific would continue to hold intrastate rights between Redwood City and San Francisco. However, Pacific would continue to hold intrastate rights, duplicating portions of intrastate authority being transferred to Golden Gate, within the cities of San Francisco, Oakland and Pittsburg over routes considered essential for the conduct of its intercity operations.

In addition to those routes over which Pacific would continue to operate in interstate commerce, transporting passengers between the same points, there is, and

would continue to be, traffic in interstate commerce to and from points on routes which would be served only by Golden Gate, and as illustrative of this, the evidence shows that during the month of October 1953, 60 passengers purchased tickets at such points in Marin County (11 at Sausalito, 9 at Mill Valley, 3 at Fairfax, 13 at San Anselmo, 14 at Marin City, and 10 at Hamilton Field), for revenue of $1,656; 36 at points in the Peninsula area (12 at San Bruno, 22 at Burlingame-Howard, and 2 at Millbrae), for revenue of $642; and 54 at points in Contra Costa County (8 at Lafayette, 22 at Walnut Creek, 1 at Monument, and 23 at Concord), for revenue of $1,175; or a total of 150 passengers and $3,473. This compares with additional interstate tickets purchased during the same month by 523 passengers, for total revenues of $13,980, at stations, other than San Francisco and Oakland, to be served by both Golden Gate and Pacific.[6] It is estimated that if Golden Gate had operated over the considered routes for the entire year 1953, it would have received $3,694,600 in passenger revenue from both its interstate and intrastate traffic.

Pacific's balance sheet as of October 31, 1953, shows the following:

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[6]The above figures for October 1953 show ticket sales outbound from the given points. However, it is estimated that the volume of interstate traffic flowing into the territory is approximately the same.

ASSETS

Current		
Cash	$1,510,658	
Temporary cash investments	4,842,189	
Accounts receivable (net)	1,904,945	
Material and supplies	562,762	$ 8,820,554
Tangible property, less depreciation		18,163,410
Intangible Property (net)		3,890,368
Investment securities and advances		
Associated and subsidiary companies	$ 657,633	
Other	184,034	841,667
Special funds		6,707,017
Deferred debits		281,526
Total assets		$38,704,542

LIABILITIES

Current		
Accounts payable	$6,729,335	
Taxes accrued	4,817,224	
Other current liabilities	668,681	$12,215,240
Advances payable		55,397
Equipment obligations		66,299
Deferred credits		49,462
Reserves		3,291,194
Capital stock		14,595,000
Earned surplus		8,431,950
Total liabilities		$38,704,542

INCOME STATEMENTS

	Net Income	
	Before Taxes	After Taxes
1951	$7,289,617	$3,368,751
1952	6,506,374	3,303,874
1953 (first 10 months)	6,973,269	2,980,269

Golden Gate's balance sheet giving effect to the proposed transaction as of April 1, 1954, would have

shown assets aggregating $1,455,960, consisting of $150,000 in cash, the 52 new buses, 138 additional buses, and 194 cash fare boxes, having net book values of $1,155,960, $130,537, and $19,461, respectively, and intangible property $2. Its liabilities[7] would have consisted of equipment obligations totaling $982,566 on the 52 buses, represented by conditional sales contracts to be assigned to Golden Gate, payable in 24 quarterly installments at 3¾ percent interest on the unpaid balance, with $163,761 due within one year and $818,805 due after one year; open account indebtedness of $173,394 to reimburse Pacific for its payments on the new buses; and $300,000 in par value common stock to be issued to Pacific.

A pro forma income statement shows that if Golden Gate had conducted the "local" services, it would have had an estimated net operating loss of $234,300 for 1953 under then existing effective fares. At the time of the hearing Pacific had pending an application before the California Commission, filed on May 18, 1953, seeking an increase in its fares for operations in the Marin County area and, to a much smaller extent, in another county not here involved. Applicants estimated that the granting of the requested increase would provide additional annual revenue to Golden Gate of $254,000, thus changing Golden Gate's estimated deficit into an estimated net income of $19,700. However, since issuance of the proposed report, the California Commission, on November 4, 1954, author-

[7]Golden Gate would assume no obligations and would issue no notes or other securities within the meaning of section 214.

ized an increase which, according to the report of the California Commission attached to applicant's exceptions, will produce estimated additional revenue of about $84,000 a year. The California Commission, in granting that increase, recognized that if the then existing fares were continued during the year ending June 30, 1955, an estimated loss of $389,800 would be sustained for the Marin County operations, and that Pacific's losses for its overall California intrastate operations would be $1,202,200.[8] The California Commission explained that although the granted increase still would not provide sufficient revenue to cover the cost of the Marin County operations, a sharp increase as proposed by Pacific would also fail to place the Marin County operations on a self-sustaining basis, because the law of diminishing returns would cause diversion from Pacific of a substantial part of its commutation patronage. To the extent this additional revenue may be applicable to the Marin County operations, the proportion or amount of which is not indicated, Golden Gate's estimated deficit would be decreased.[9]

The operations which Golden Gate would acquire involve the transportation, over short distances, principally of daily commutation passengers at special fares, with the peak traffic volume being inbound to

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[8]This figure includes consideration of a downward trend of traffic among other things.

[9]Counsel for Pacific stated at the oral argument that a petition for rehearing has been filed in that proceeding, and also that an application for an increase in fares on the Peninsula had been filed with the California Commission.

San Francisco between the hours of 7 a.m. and 9 a.m., and outbound between the hours of 4:30 p.m. and 6:30 p.m. In the case of Marin County traffic, 90 transit-type buses are operated by Pacific during a peak period, whereas service on that route during the balance of the day requires only 19 buses, the remaining buses and drivers being idle during the off-peak period. The Contra Costa operation is similar to the Marin County service, although the traffic volume is not as great. The Peninsula traffic is subject to less pronounced peaks because the Southern Pacific Railroad provides for the great bulk of the commutation service in that area. In contrast to the mass transportation problem, Pacific's intercity or mainline traffic does not consist of regular daily passengers, the usual one-way and round-trip fares are charged instead of reduced commutation fares, longer trips are involved, and mainline equipment is utilized. A single contract with the Union covers employees of both the "local" and long-distance services, although it includes separate sections that apply specifically to the different services, one of the principal differences being the payment of mainline drivers generally on a mileage basis, whereas "local" drivers are paid on an hourly basis. No other company in the Greyhound system operates a commutation service of the character or magnitude of that existing in the San Francisco Bay area and Pacific has no comparable "local" or commutation service in any other area.

To show that the transaction would be consistent with the public interest, applicants submitted evi-

dence concerning certain historical "problems" which, they contend, would be solved by this proposal. It appears that prior to the recently authorized increase, only minor adjustments had been made in the commutation fares since 1940 or 1941, despite an increase, according to Pacific, of over 100 percent in the cost of providing the service; and during 1953, Pacific sustained a deficit of $234,300 in conducting these operations. On the other hand, Pacific contends that the fares of two other commutation services, operating in the San Francisco and Los Angeles areas, have been increased by over 100 percent since 1941. This depressed fare structure, applicants maintain, has resulted in a loss of practically all of Pacific's capital investment in the local operations, and losses in Marin County operations alone have exceeded $2,000,000 since inception of that service in 1941. Pacific attributes this situation to the rate-making policy of the California Commission, which the commuter organizations defend. Pacific contends that this policy has required the subsidization of the services under these commutation fares by the revenue from the systemwide intercity operations, without regard to the circumstances and costs of the "local" operations, and that this has seriously affected its ability to compete in the face of a declining traffic volume. The insistence by the California Commission upon the preparation and submission of systemwide statistics and accounting in the determination of proceedings involving the "local" commutation fares has increased Pacific's costs and required the maintenance of records and statistics,

which applicants contend, could be eliminated under the proposed separation, resulting in substantial savings. Applicants further submit that in addition to the savings resulting from the simplification of rate proceedings and maintenance of records, other savings, such as in station and insurance expense, may be realized by the separation because of operational and managerial improvements and abandonment of main-line carrier practices in the local operations.

Applicants emphasize that the proposed separation will effectively resolve existing problems of management. While Pacific's long-haul operations are the source of its financial strength, producing 90 percent of the system revenue, the exacting demands of the commuters have caused its president to devote 15 percent of his time to the "local" operations, its auditor and his staff 70 percent, and its vice president in charge of operations 25 percent.

In order to advise and assist Pacific in the organization of Golden Gate, to select the management for the latter and to recommend policies in the operations of a truly suburban service by Golden Gate, Pacific has engaged an expert with 30 years' experience in local transit operations. He expressed the opinion that there should be a complete separation since the service which Golden Gate would render is distinct, from an economic and traffic standpoint, from that which Pacific would continue; and that the proposed operation by Golden Gate is entirely feasible and would be more easily adaptable to the special needs of its patrons and to integration with local activities and over-all plan-

ning.[10] He stated that the interests of Pacific's management lie elsewhere; that the management problem will not be solved unless a separate corporation is set up because "you can't serve two masters"; that establishment of a separate management in charge of local operations subject only to supervision by Pacific's board of directors, which would not be "local" minded, is impractical; and that Golden Gate should have a separate board of directors, a majority of which should be local representative from the areas served.

Part of the overall management problem is that of labor-management relations which, although strongly disputed by the Union, applicants contend would benefit from the proposed separation of the operations. The negotiation of employment contracts with the Union in the past has been made especially difficult because the terms applicable to the two classes of drivers have been embraced in a single labor agreement, even though the operating practices have been different. As an illustration, the current agreement was negotiated following settlement of a strike which forced suspension of Pacific's entire operations for 79 days, the principal issue being the Union's demand for a five-day week for the mainline drivers, based on the

[10]The California State legislature has appropriated funds for a survey of the transportation system in the area, and it is contemplated that a San Francisco Bay Area Rapid Transit District will be established to relieve traffic congestion. All the territories to be served by Golden Gate are within the boundaries of the proposed transit district, and it is expected that the "local" operations would be integrated into, and supplement other services in; such a transit system, thus making it possible for patrons to travel between any points in the entire transit district. The study will probably not be completed before the end of 1955.

fact that the "local" drivers were granted a 5-day week, thus making Pacific the first major motorbus carrier in the United States to make such a concession. In addition, Pacific claims that the ill will engendered by the unfavorable publicity incident to its "local" difficulties has reflected upon its reputation and has affected the volume of long-haul traffic it secures in this area.

Although not an intervener in this proceeding, on March 23, 1954, the Secretary of the California Commission addressed a letter to us, a copy of which was transmitted to Pacific and introduced in evidence by the latter, stating the position of that Commission to be that the proposed transfer of the "local" operations is wholly unnecessary, would create a questionable expense, and would tend to create uncertainty and confusion when the fixing of intrastate rates for Golden Gate might be considered; that the capital structure of Golden Gate would be of questionable soundness; that it would not recognize any transfer of the intrastate operating rights without its approval; and that the transfer would be contrary to the public interest unless conditioned to provide (a) that neither Golden Gate nor Pacific will ever claim or urge that Pacific's total intrastate operating results should not be considered for the purpose of prescribing intrastate rates for Golden Gate, (b) that Pacific shall agree to take back the operations from Golden Gate if and when ordered to do so either by this Commission or the California Commission, and then to restore the operations to the status and con-

dition existing at the time of the transfer to Golden Gate, and (c) that Pacific and Golden Gate shall file written undertakings agreeing to the two stated conditions.

Pacific, reiterating that the local operations should be self sustaining, states that the first proposed condition is unacceptable. At the hearing, Pacific's vice president in charge of operations stated that Pacific also would not be willing to accept the second proposed condition, although in a letter to the California Commission, dated a week prior to the hearing, Pacific's president, with the concurrence of the vice president, stated that while imposition of the second condition would not be just, reasonable, or necessary, he felt that Pacific would accept it if we were to condition our order in these proceedings to require Pacific to agree that within some specified period it would take over Golden Gate's operations, upon order, after hearing, of this Commission.

The Union, the Counties, and the Commuter Associations collectively question the jurisdiction of this Commission over the proposed transaction under section 5 on the ground that Golden Gate is not a "carrier" as defined in the act, that it must first acquire the status of a "carrier" before jurisdiction attaches under section 5, and that the proposed transaction therefore, is not within the scope of section 5(2)(a)(i) which may be authorized. It is apparent that if the transaction were accomplished without our prior authority it would be in violation of section 5(4). Jurisdiction is determined on the basis of facts

isting at consummation, and Greyhound proposes to acquire control of Golden Gate concurrently with its becoming a carrier through the purchase. Jurisdiction has been asserted in numerous similar cases and is clear under section 5. *Columbia Motor Service Co. —Purchase—Columbia Terms. Co.*, 35 M.C.C. 531. Jurisdiction over a transaction which is subject to section 5 is exclusive and plenary under the plain language of paragraph 11 of section 5, and, upon our approval of such a transaction, the applicants would have full power to "carry such transaction into effect and to own and operate any properties and exercise any control or franchises acquired through said transaction without invoking any approval under State authority".

The Union further argues that the transaction is contrary to this Commission's long-standing policy favoring corporate simplification, and would adversely affect transportation service to the public in that (1) Golden Gate would not be financially capable of insuring continued service, (2) less service would be provided to the commuters who already find existing service inadequate and who would be deprived of their present option of riding on either intercity or local buses, (3) the extensive shifting, as a result of the transaction, of employees between the "local" and intercity operations would reduce labor efficiency and result in loss of time and expense to the employer and employee, and, in some instances, cause a loss of jobs, (4) the lowered morale resulting from the shifting of personnel, the negotiation of two labor contracts in-

stead of one, and the creation of smaller collective bargaining units which would tend to diminish the restraining influences of varying interests within the unit, would increase the possibilities of strikes, probably resulting in service interruptions in both companies, and (5) the proposal would result in high costs to both companies.

The Counties and the Commuter Associations, like the Union, point to Golden Gate's limited capital, the possible impairment of labor relations, and question whether any savings would result which could not as easily be realized by conducting the "local" operations as an independent division. They argue that the separation of management can be accomplished as well by the creation of a separate operating division as by the creation of a subsidiary corporation, pointing to the pending application wherein Pacific would be merged into its parent company and operated as a division of that carrier; that the real reason for the proposal is to disconnect the local operations for rate-making purposes, and thus defeat the California Commission's practice of determining proposed fare increases for the "local" operations in the light of Pacific's systemwide operations and revenues; and that the public would be prejudiced by the establishment of Golden Gate's future fares. They argue at some length in support of the rate-making policy of the California Commission, contending that the losses experienced by Pacific in the "local" operations because of the low fares are counterbalanced by the excessive rate of return in other parts of Pacific's system where the

fares cannot be reduced because of the revenue needs of Pacific's competitors. These interveners urge that the matter of separating these operations, which are primarily in intrastate commerce, be left to the California Commission.

In their exceptions and at the oral argument, applicants argue that the examiner erred in not finding that substantial benefits in management, operations, and public relations would result from consummation of the proposed plan in matters where the cooperation or lack of cooperation of the California Commission and the Union would make no difference; and they add that under present rules of the California Commission and according to practices applied in the treatment of other commutation subsidiaries, simplified accounting and expeditious handling of rate cases, without regard to system earnings, will result from the separation. Pacific expects Golden Gate to be self-sustaining if present gross revenues from the "local operations of nearly $4,000,000 are increased by 20 to 25 percent through an upward adjustment of fares. Counsel for Pacific stated at the oral argument that he believed Pacific would accept a condition requiring it to furnish more working capital to Golden Gate than the proposed $150,000, and he renewed the offer to accept a condition to approval herein, requiring Pacific to agree that within a specified period it would take over the operations of Golden Gate if we should order it to do so. Applicants insist in their argument that section 5 of the act does not require a showing that the proposed plan will result only in

affirmative public benefits or that all benefits possible of accomplishment will be accomplished, affording a solution to all existing problems, nor must improved service to the public be shown, but that probable benefits to the entire public, intercity patrons as well as commuters, must be balanced against probable injuries, and that a plan, proposed in the carrier's managerial discretion, should be approved unless found to be "contradictory", "Hostile" or injurious to the public interest. Even if the California Commission and the Union do not treat the two corporations as separate entities, applicants state, the situation would be as it presently exists and the public interest would not be prejudiced; but the public interest will be promoted to the extent that any of the problems are alleviated. On the other hand, they submit, unless separation is authorized, existing problems will become aggravated when the dissimilar "local" operations become blanketed with the nationwide operations of Greyhound upon merger of Pacific with its parent.

Admitting that, through the proposed transaction, they hope to escape from the previously described rate-making practices and policies of the California Commission, applicants argue that we should be seriously concerned with the results of those practices and policies, and that we should approve the transaction to alleviate the burden placed on interstate commerce through the California Commission's policy of requiring a subsidization of intrastate operations by revenues derived from interstate operations, and thus further the national transportation policy by promot-

ing efficient service and fostering sound economic conditions in transportation.

Pacific states that after the transfer it would be necessary for it to continue operations over some of the same routes as Golden Gate in order to obtain access to its terminals in San Francisco and Oakland, but, if there is serious objection to this duplication, applicants would accept a condition, albeit reluctantly, whereby Golden Gate's duplicating interstate rights would be canceled upon consummation of the transaction. If this were done, the remaining interstate operating rights of Golden Gate would be negligible both from the standpoint of points and traffic.

The Counties and the Commuter Associations argue that the service in question, which is almost completely intrastate in character, should be left to local regulation, that this Commission should not set itself up as an appellate body to review the validity of rate orders of the California Commission, that it was never contemplated that this Commission should act in such a capacity, and that the proceedings before the California Commission are not a part of this record. They stress that Pacific is seeking relief here because it knows, from past experience, that the California Commission would not approve of Golden Gate's proposed financial structure, referring to the rejection by the California Commission of a proposed transfer in 1952 to an experienced operator of the Marin County operations on the ground that the proposed financial structure, involving the contribution of $200,000 by the op-

erator, was inadequate. They urge that, although Pacific now asserts that the "local" operations constitute one geographic and economic unit distinct and separate from the intercity operations, it significantly decided against transferring all the "local" operations in 1952 and instead sought to transfer only the Marin County operations. These protestants submit that if the State Commission's rate-making policies are illegal, Pacific has an adequate remedy in the courts, of which it has not availed itself in connection with prior rate decisions of the California Commission. With respect to applicants' allegation that rate proceedings before that Commission have in the past been protracted, they point to adjournment requests by Pacific in the proceedings determined in 1954, and cite one instance in which a new application in 1950 was consolidated with pending proceedings, prior to determination of which an interim or emergency fare increase was granted.

The Union argues in its exceptions that the proposed report should have found that employees would be adversely affected by the transaction. It adds that, after careful study, the California Commission has concluded that the Marin County operations cannot be placed on a profitable basis merely by a fare increase, that it is evident that that Commission would not authorize substantially increased fares in the "local" operations, after separation, and even if such increases were permitted, any expected increase in revenues would be tempered by the loss of traffic resulting from any sharp increase in fares.

The phrase "consistent with the public interest" is broad in scope, as repeatedly stated by the courts, and we are plainly charged with the obligations, while keeping in mind the national transportation policy, of considering all matters of every character affecting the public interest which may result from a proposed transaction, including the weighing of prospective benefits to the public against any disadvantages which might be expected to result. However, our province is not to determine whether some plan other than the one proposed might be more advisable. Our function is to determine whether the plan presented will be consistent with the public interest, although we may require modification of the plan or impose conditions where necessary in the public interest.

While our policy has been to encourage corporate simplification, this policy should not be invoked so as to cause the impractical retention in a single entity of highly dissimilar operations, as here, especially if such retention causes the undesirable results shown by this record. As previously stated, the "local" and intercity services are different with respect to the nature of the service provided, the type of passengers carried, the mileage involved, and the type of equipment utilized. Pacific's public relations have suffered because of its difficulties with respect to its "local" operations, and its management has had to devote more time and energy to those operations than are commensurate with the comparative traffic and revenue producing results of this service. It is also apparent that in the past the commutation services have

been conducted at considerable losses, which have had to be borne from profits obtained from Pacific's system operations to the prejudice of its long-haul operations, and that even under the recent fare increase the "local" operations are not expected to produce revenues equalling the cost of providing the service. That increase, as explained by the California Commission, is expected to reduce anticipated losses on the Marin County operations, during the year ending June 30, 1955, by only about 22 percent.

As contended by applicants, we may not properly overlook the burden on the interstate operations of Pacific which the proposed transaction would alleviate. A new corporation, with a completely separate management experienced in "local" mass transportation, will be able to confine its attention to that service and thus conduct those operations more efficiently than the present management, whose main interests are concerned with the long-haul operations. At the same time, Pacific's management will be relieved of the necessity of conducting two dissimilar services, enabling it to concentrate exclusively on its intercity operations. This is especially important in view of the decline in Pacific's long-haul traffic, both interstate and intrastate. The same service now rendered would be provided by Golden Gate, and the same facilities would be available. While, as pointed out by the Union, commuters would not be permitted the option of riding on Pacific's through buses in the Marin County and Peninsula areas, very little commuter traffic has been handled on these through trips.

However, as previously shown, interstate passengers would, as now, have the option of riding on either intercity or local buses where the routes coincide, and a joint fare arrangement would facilitate transfers of passengers at connecting points. As Golden Gate's management would be more familiar with local conditions and more disposed to study the particular needs of its patrons, the probabilities of adjustments to provide better service and eliminate causes of any existing complaints would be increased. Ultimate integration into the contemplated rapid transit system should be facilitated.

Under the circumstances here, the soundness of Golden Gate's financial structure under the proposed financing is questionable. It is not our function in this proceeding to determine the justness and reasonableness of the intrastate fares in question or the lawfulness of the policies of the California Commission. Neither shall we attempt to prophesy the future action of that body in its rate proceedings. The amount of interstate traffic to be transported by Golden Gate would produce an estimated 5.7 percent of its total revenues, and less than 20 percent of this amount would be the result of a service by Golden Gate which could not also be provided by Pacific. Thus Golden Gate would essentially be a "local" operation and, as we shall find that the separation would be consistent with the public interest, the question as to the fares to be charged is one to be determined by the local authorities. However, as it appears that, if Golden Gate had conducted the "local" operations during the

year 1953, it would have had a deficit of approximately $150,000, assuming that the estimated additional revenue of $84,000 from the fare increase would decrease the expected deficit of $234,300 by that amount, and as it would be obliged to incur equipment and other obligations, we are of the opinion that the contemplated cash investment in Golden Gate by Pacific of $150,000 is insufficient, and that $250,000 would be more appropriate to its needs. Our findings will be conditioned accordingly.

The Union's concern as to the adverse effects of the separation on employees seems unwarranted. Applicants have stated that there will be no loss of employment, and that existing terms and conditions of employment, seniority rights, pension, welfare, insurance, and hospital plans, and other benefits accorded to Pacific's employees would be extended to Golden Gate's employees. However, the Union has persisted in its opposition. Our approval of the transaction is with the expectation that applicants and the Union will make every effort to reach an agreement to protect all employees of Pacific and Golden Gate affected by the transaction, so that they will not be placed in any worse position than may be required by the exigencies of the situation. To insure such protection, our findings will be conditioned to reserve jurisdiction for a period of 2 years from date of consummation to make such additional findings and to impose such terms and conditions with respect to all employees of Pacific and Golden Gate as may be necessary to protect their interests.

As previously mentioned, at the hearing Pacific's vice president in charge of operations rejected the suggestion made by the California Commission in its letter of March 13, 1954, that we should impose a condition requiring Pacific to take back Golden Gate's operations if and when ordered to do so by either this Commission or the California Commission. However, at the oral argument, counsel referred to a letter dated April 7, 1954, prior to the hearing, wherein Pacific's president stated that it would agree that, within a specified period, it would take back Golden Gate's operations upon our order, after hearing. We doubt the wisdom of approving such a transaction as this on an experimental basis. Also the problems which would be attendant upon the possible entry of such a mandatory order, such as the necessity for periodic inspection of Golden Gate's books and appraisal of its operations and financial condition to decide whether the proceeding should be reopened for hearing to determine whether such an order should be entered directing a reunification of the operations, make such a condition of doubtful practicability. We are of the opinion that the question of possible future reunification of these operations is one which properly should be left to applicants' management.

The proposed plan contemplates the holding of duplicating operating rights by both carriers. As previously mentioned, as long as it may continue to serve San Francisco in its long-haul operations, Pacific would accept any restriction that might be imposed to limit its service over the coinciding routes, and

applicants specifically suggest a condition requiring cancellation of all duplicating-interstate operating rights of Golden Gate. It might be noted, however, that any restriction on Pacific's authority to serve intermediate points, but with Golden Gate authorized to serve those points, might react to the detriment of long-haul passengers who would be compelled to use Golden Gate and change buses. Also, while any lack of authority in Golden Gate to operate in interstate commerce over the duplicating routes would not be of too great significance, so far as the traveling public is concerned, retention of such authority would enable some intercity passengers to use the equipment of either Pacific or Golden Gate, and, in addition, would provide Golden Gate with some additional revenue. We are therefore of the opinion that the holding of authority to provide duplicating service may, in this instance, be found to be consistent with the public interest.

We find, in No. MC-F-5643, that acquisition by Pacific Greyhound Lines of control of Golden Gate Transit Lines through ownership of capital stock, the contemporaneous purchase by Golden Gate Transit Lines of the presently-described operating rights and property of Pacific Greyhound Lines, and the acquisition by The Greyhound Corporation of control of Golden Gate Transit Lines, and of the operating rights and property through the transaction, upon the terms and conditions set forth herein, which terms and conditions are found to be just and reasonable, constitute a transaction within the scope of section 5(2)(a), and

will be consistent within the public interest, and that, if the transaction is consummated, Golden Gate Transit Lines will be entitled to a certificate covering the said portions of the operating rights granted in No. MC-1511 and subnumbered proceedings as specifically set forth in appendix A hereto; *provided, however,* that if the authority herein granted is exercised, the amount of the cash payment to be made by Pacific Greyhound Lines to Golden Gate Transit Lines shall be $250,000; *provided further* that, if the authority herein granted is exercised, the authority of Pacific Greyhound Lines to operate, over an alternate route, between Danville and Dublin, Calif., over California Highway 21 shall be cancelled; *provided, further,* that, if the authority herein granted is exercised, Golden Gate Transit Lines, shall amortize in equal monthly amounts over a maximum period of three years, commencing with the date of consummation of the purchase, the amount assigned to its "Other Intangible Property" account as a result of the transaction, or, in lieu of amortization in any month of the three year period, it may write off the unamortized balance of the amount so assigned, and Pacific Greyhound Lines shall immediately write off the excess, if any, of the consideration paid over the net book value of the stock of Golden Gate Transit Lines, which it would acquire, excluding intangibles, as of the date of consummation, such amortization and write-off to be accomplished in the manner to be determined upon submission of a statement showing all expenditures and the accounting proposed to record the transaction as required by our

order herein; and *provided, further,* that, if the authority herein granted is exercised, jurisdiction shall be reserved for a period of 2 years from the date the transaction is consummated in order to make such additional findings and to impose such terms and conditions with respect to employees of Pacific Greyhound Lines and of Golden Gate Transit Lines, as may be necessary and lawful, if, upon petition by any of the said employees or their representatives, within that period, it is shown that the conditions of their employment or interests incident thereto have been or will be adversely affected by anything done or proposed to be done pursuant to, or as direct result of, the consummation of the transaction under the authority herein granted; and that consummation of the transaction by applicants will be considered acceptance of the said reservation of jurisdiction.

We further find, in No. MC-1511 (Sub-No. 103), that, in connection with the transaction herein authorized, the public convenience and necessity require the continuance by Pacific Greyhound Lines of its operations in interstate or foreign commerce as a common carrier by motor vehicle, of passengers and their baggage, and express, mail, and newspapers, in the same vehicle with passengers, between the termini, over the routes, and to and from the intermediate points specified in appendix B hereto; that Pacific Greyhound Lines is fit, willing and able properly to perform such service; and that, upon consummation of the transaction herein authorized, and upon compliance with sections 215 and 217 of the act and the rules,

regulations, and requirements thereunder, it will be entitled to a certificate of public convenience and necessity authorizing such operations.

An appropriate order will be entered.

Commissioner Hutchinson, being necessarily absent, did not participate in the disposition of these proceedings.

Appendix A

Interstate operating rights of Pacific Greyhound Lines to be acquired by Golden Gate Transit Lines under the findings in the report. All authority is over regular routes in California, in both directions, serving all intermediate points, unless otherwise noted.

Passengers, and their baggage, and express, mail, and newspapers, in the same vehicle with passengers,

MARIN COUNTY ROUTES

Between Novato and San Francisco:

From Novato, over U. S. Highway 101 to San Francisco.

Between San Rafael and Corte Madera Road Junction:

From San Rafael, over unnumbered highway via San Anselmo and Corte Madera to junction U. S. Highway 101 (Corte Madera Road Junction).

Between Inverness and San Anselmo:

From Inverness, over unmarked county highway to junction California Highway 1 (Point Reyes Station), thence over unnumbered highway to Fairfax, thence over Sir Francis Drake Boulevard to San Anselmo.

Between Kentfield Corners and Greenbrae:

From junction unnumbered highways north of Kentfield (Kentfield Corners), over Sir Francis Drake Boulevard to junction U. S. Highway 1 (Greenbrae).

Between Mill Valley and Manzanita:

From Manzanita over unnumbered highway to Alto, thence over Blithedale Avenue and Throckmorton Street to Mill Valley.

Between Mill Valley and Tamalpais High School:

From Tamalpais High School over Miller Avenue to Mill Valley.

Between Alto and Belvedere:

From Alto over Alto Highway to Tiburon Wye, thence over unnumbered highway to Belvedere.

Between Belvedere Junction and Tiburon:

From junction unnumbered highways northwest of Belvedere (Belvedere Junction), over unnumbered highway to Tiburon.

Exhibit B

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D.C., on the 6th day of July, A.D. 1955.

No. MC-F-5643

The Greyhound Corporation—Control; Pacific Greyhound Lines—Control; Golden Gate Transit Lines—Purchase (Portion)—Pacific Greyhound Lines

Investigation of the matters and things involved in this proceeding having been made, and the Commission, on the date hereof, having made and filed a report containing its findings of fact and conclusions thereon, which report is hereby made a part hereof:

It is ordered, That acquisition by Pacific Greyhound Lines, of San Francisco, Calif., of control of Golden Gate Transit Lines, also of San Francisco, through ownership of capital stock, and for the contemporaneous purchase by Golden Gate Transit Lines of certain operating rights and property of Pacific Greyhound Lines, and acquisition by the Greyhound Corporation, of Chicago, Ill., of control of Golden Gate Transit Lines, and of the operating rights and property through the transaction, be, and they are hereby approved and authorized, subject to the terms and conditions set out in the findings in said report.

It is further ordered, That, if the parties to the transaction herein authorized desire to consummate

same, they shall (1) promptly take such steps as will insure compliance with sections 215 and 217 of the Interstate Commerce Act, and with rules, regulations, and requirements prescribed thereunder, and (2) confirm in writing to the Commission, immediately after consummation, the date on which consummation has actually taken place.

It is further ordered, That, if the authority herein granted is exercised, Pacific Greyhound Lines and Golden Gate Transit Lines shall submit for consideration and approval, a sworn statement and one copy thereof showing all expenditures made, by dates, or to be made, in connection with the transactions authorized, including the consideration, legal and other fees, commissions, and any other cost incidental to the transaction, the assets acquired, and the liabilities assumed, indicating the account number and title to which each item has been, or is to be debited or credited.

It is further ordered, That the authority herein granted shall not be exercised prior to the effective date hereof, and that this order shall be effective on August 24, 1955.

It is further ordered, That unless the authority herein granted is exercised within 180 days from the effective date hereof, this order shall be of no further force and effect.

And it is further ordered, That recital in said report of balance sheet and other financial data shall not be construed as approving accounting methods which

have been followed or expenditures represented thereby.

By the Commission.

Harold D. McCoy
Secretary.

(SEAL)